IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

FRIDAY, THE 5TH OCTOBER 2007 / 13TH ASWINA 1929

Crl.Rev.Pet.No. 3317 of 2007()

CC.1203/2004 of JUDL.MAGISTRATE OF FIRST CLASS-I, HOSDRUG

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REVN. PETITIONER: PETITIONER/ACCUSED

T.K.VIJAYARAGHAVAN, AGED 43 YEARS,
S/O.LATE T.K.RAGHAVAN PILLAI, 'DEEPAM',
KOLOTH, PULLUR VILLAGE, P.O.HARIPURAM.

BY ADV. SRI.M.SANTHOSHKUMAR

RESPONDENTS: COMPLAINANT

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1. ADUKKADUKKAM VEETIL KUMARAN NAIR,
AGED 49 YEARS, S/O.CHANDU NAMBIAR,
AISHWARYA BHAVAN, VISHNUMANGALAM,
PULLUR VILLAGE, HOSDURG.

2. STATE OF KERALA REPRESENTED BY
THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM

BY PUBLIC PROSECUTOR SRI.K.S.SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 05/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 3317 OF 2007 D

Dated this the 5th day of October, 2007

O R D E R

In view of the proposed disposal of the revision, notice to the respondent complainant is dispensed with in this revision.

2. The revision petitioner is the accused in C.C.No.1203/04 on the file of the JFCM-I, Hosdurg which is a prosecution for an offence punishable under section 138 of the Negotiable Instruments Act, 1881, in respect of a cheque for an amount of Rs.3,60,000/-. According to the revision petitioner, the complainant, who is none other than the husband of the younger sister of the revision petitioner, had stolen the cheque dated 27.1.04 entrusted by the revision petitioner with his wife to be handed over to an LIC agent without writing the amount for payment of the exact premium amount (which by practice, used to be filled by the LIC agent himself). After the evidence of the complainant was over and after the examination of the revision petitioner under section 313 Cr.P.C., the revision petitioner filed CMP.No.1988/07 for sending the cheque to the handwriting expert to ascertain the overwriting and correction in the date of the

cheque. According to him, the cheque, which was entrusted with his wife, was dated 27.1.04 which was wrongly corrected as 27.7.04. After hearing both sides, the court below as per order dated 19.5.2007 allowed the said request for ascertaining the overwriting and correction in the date of the cheque. But when the revision petitioner filed Annexure-A2 forwarding note before court the request thereunder was to examine and ascertain the genuineness of the correction in the cheque as well as the handwriting seen in the cheque. There was no such additional direction in CMP No.1988/07 and noticing the additional request made in the forwarding note, the court below as per order dated 13.7.07 declined his prayer. The operative portion of the order reads as follows:-

> *"Therefore, since the accused has not taken steps in spite of sufficient opportunities given, the prayer of the accused now made is declined as belated."*

3. Since there appeared some ambiguity in the operative portion of the impugned order, the learned Magistrate was asked to clarify. As per letter dated 29.9.07, the Magistrate has clarified that CMP No.1988/07 filed by the revision petitioner/accused for

an opinion from the handwriting expert to ascertain the overwriting and correction of date in the cheque in question, was allowed on 19.5.07 and since in the forwarding notes filed by the accused on 1.6.07, he had also made a further prayer to send the cheque for comparison of the handwriting in the cheque, the additional prayer was disallowed and that so far the accused has not taken any steps in terms of the order in CMP.No.1988/07. Thus, what has been disallowed is only the additional prayer made in the forwarding note. The revision petitioner is, therefore, given two weeks' time to file a revised forwarding note in terms of the order dated 19.5.07 passed in CMP.No.1988/07.

This revision is disposed of accordingly.

(V. RAMKUMAR, JUDGE)

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